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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,546	03/29/2005	Tomoko Aono	1907-0221PUS1	7905
2292 7590 04/15/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER FLETCHER, JAMES A				
ART UNIT 2621		PAPER NUMBER		
NOTIFICATION DATE 04/15/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/529,546

Applicant(s)

AONO ET AL.

Examiner

JAMES A. FLETCHER

Art Unit

2621

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/ROBERT CHEVALIER/
Primary Examiner, Art Unit 2621
April 11, 2009.

Continuation of 11. does NOT place the application in condition for allowance because:

In re page 5, Applicant's Representative states: "Neither Dean nor Plourde disclose or suggests that, in response to an instruction to start recording, a dummy area is reserved the [sic] by the recording unit and after an instruction to end recording, image data and/or audio data that was stored in the memory immediately before the instruction to start recording, is moved to this dummy area."

The Examiner respectfully disagrees. Plourde explicitly discloses the reservation of an area for transfer of the content of the time shift buffer by allocating non-buffer space, as noted in Column 25, lines 33-41. Further, Plourde explicitly discloses that the image and/or audio data is moved to the allocated non-buffer space in the same disclosure. The closest the Examiner can determine a reason for the Applicant's traversal is the lack of the term "dummy" in Plourde. That term is deemed by the Examiner to simply mean space that is available for use by the system, and is clearly and fully met by the allocated space disclosed by Plourde.

In re page 6, Applicant's Representative states: "Neither Plourde nor Dean discloses or suggests that, in response to an instruction to start recording, a dummy area is reserved by the recording unit and after an instruction to end recording, image data and/or audio data that was stored in the memory immediately before the instruction to start recording, is moved to this dummy area."

The Examiner again respectfully disagrees. Plourde explicitly disclosed a reserved area by the recording unit in response to an instruction to start recording ("When a user requests that at least one of the media content instances included in the time shift buffer...becomes permanently recorded, this request is communicated to the PVR application...[which] then causes the media content instance to be allocated in non-buffer space..." Plourde also explicitly discloses that the image data and/or audio data that was stored in the memory immediately before the instruction to start recording is moved to this dummy area)"the associated clusters are removed from the TSB...[and] re-designated as non-buffer space clusters..."